

Message Text

CONFIDENTIAL

PAGE 01 STATE 054306
ORIGIN L-03

INFO OCT-01 EUR-12 ISO-00 FCSC-01 EB-08 TRSE-00 SS-15
SP-02 CIAE-00 INR-10 NSAE-00 SEC-01 OMB-01 FRB-03
H-01 JUSE-00 /058 R

DRAFTED BY L:SMSCHWEBEL:CDJ
APPROVED BY EUR:JGOODBY
EUR/CE:VSGRAY
FCSC:WDMCCLELLAN
-----097855 030321Z /63

P 030131Z MAR 78
FM SECSTATE WASHDC
TO AMEMBASSY BONN PRIORITY
INFO AMCONSUL MUNICH PRIORITY
AMEMBASSY BERLIN

C O N F I D E N T I A L STATE 054306

MUNICH FOR CHARIG

E.O. 11652: GDS

TAGS: CPRS, PGOV, GW, US, GE

SUBJECT: OVERLAPPING GERMAN CLAIMS

REFS: (A) BONN 03420 (B) BONN 03669

1. APPRECIATE REFTELS, WHICH WE HAVE REVIEWED WITH
GENERAL COUNSEL OF FCSC.
2. IN ANSWER TO QUESTION OF WHETHER SEC. 605 OF P.L. 94-
542 MEANS THAT USG CLAIMS AGAINST THE GDR WOULD BE
DIMINISHED BY THE AMOUNT OF COMPENSATION THAT CLAIMANTS
HAD RECEIVED FROM THE FRG, FCSC GENERAL COUNSEL ADVISES
THAT, IN HIS VIEW, IT DOES NOT. THE INTENT OF THE PRO-
CONFIDENTIAL

CONFIDENTIAL

PAGE 02 STATE 054306

VISION IS NOT TO EMBRACE SUCH PAYMENTS; MOREOVER,
AMOUNTS PAID BY THE FRG ARE CONTINGENT IN THE SENSE THAT
THEY ARE, UNDER FRG LAW, SUBJECT TO REDUCTION BECAUSE
OF PAYMENTS ON SAME CLAIMS FROM OTHER SOURCES AND,
BEING CONTINGENT, SHOULD NOT, IN THE VIEW OF THE FCSC
GENERAL COUNSEL, BE TREATED AS AMOUNTS THE CLAIMANT HAS
RECEIVED WITHIN THE MEANING OF SEC. 605.

3. IT ALSO IS NOT BELIEVED THAT SEC. 605 PROVIDES THE BASIS FOR THE USG WITHHOLDING FROM CLAIMANTS ENTITLED TO COMPENSATION UNDER A GDR/USG SETTLEMENT AN AMOUNT

EQUAL TO THAT RECEIVED FROM THE FRG ON SAME PROPERTY CLAIM. THIS SECTION SPEAKS ONLY TO THE DETERMINATION OF THE AMOUNT OF AWARD, NOT OF WITHHOLDING AND PAYMENT OVER.

4. AS TO THE COURSE OF ACTION WE SHOULD NOW PURSUE, WE ARE NOT PREPARED TO AGREE TO THE TYPE OF "BEST EFFORTS" CLAUSE RUMPF SPECULATES THE FRG MIGHT ACCEPT, AND STILL LESS TO AGREE TO A MORE CATEGORICAL ASSURANCE, BECAUSE WE OPPOSE ENDORSING PAYMENT INTO THE EF OF WHATEVER REIMBURSEMENT IS REQUIRED UNDER FRG LAW (WHICH MIGHT NOT HAVE ADEQUATE REGARD TO THE EQUITIES). WE WOULD BE PREPARED TO EXPRESS OURSELVES IN FAVOR OF CLAIMANTS NOT RECEIVING MORE THAN 100 OF THEIR VALID CLAIMS, SO THAT, IF A CLAIMANT, WHEN ADDING TO WHAT THE FRG HAS AWARDED HIM HIS ACTUAL RECEIPTS FROM THE GDR, WOULD RECEIVE MORE THAN 100 OF HIS CLAIM, THE FRG SHOULD BE CREDITED WITH ENOUGH OF THE GDR PAYMENT TO REDUCE THE CLAIMANT'S RECEIPTS TO 100 . PRACTICALLY SPEAKING, HOWEVER, WE SEE LITTLE CHANCE OF SUCH A RESULT, SINCE OUR UNDERSTANDING IS THAT FRG CONFIDENTIAL

CONFIDENTIAL

PAGE 03 STATE 054306

HAS NOT GENERALLY MADE CLAIMANTS WHOLE AND, IN ANY EVENT, WE ANTICIPATE THAT GDR PAYMENTS MAY BE QUITE SMALL. IF, E.G., A CLAIMANT WERE RECEIVING 75 OF HIS CLAIM FROM THE FRG AND WERE TO RECEIVE 10 MORE FROM GDR, WE COULD NOT SUPPORT PAYMENT OF ANY PORTION OF HIS RECOVERY TO THE FRG REGARDLESS OF THE PROVISIONS OF FRG LAW.

5. IN VIEW OF FOREGOING, WE COULD CONTEMPLATE THE POSSIBILITY OF OFFERING FOLLOWING ASSURANCE TO FRG:

"IF THE FRG IS PREPARED TO LIFT ITS SUSPENSION OF PAYMENTS WITH RESPECT TO ALL BENEFICIARIES OF U.S. NATIONALITY WHOSE PAYMENTS HAVE BEEN, ARE, OR MAY BE SUSPENDED, PROMPTLY AFTER RECEIPT OF THE FOLLOWING ASSURANCE FROM THE USG, THE USG WOULD BE PREPARED TO ASSURE THE FRG THAT: IT WILL ENDEAVOR TO ENSURE THAT ANY U.S. NATIONAL WHO RECEIVES AN AWARD AGAINST THE GDR PAYS OVER TO THE FRG (OR CREDITS THE FRG WITH) THE AMOUNT ON THAT AWARD ACTUALLY RECEIVED FROM THE GDR INsofar AS THAT AMOUNT, WHEN ADDED TO THE SUM WHICH THE CLAIMANT WILL HAVE RECEIVED FROM THE FRG

WHEN ALL PAYMENTS OF THE FRG TO THE CLAIMANT ARE COMPLETED, EXCEEDS 100 OF THE U.S. NATIONAL'S VALID CLAIM, AS THE TOTAL OF THAT CLAIM (WITHOUT DEDUCTIONS FOR PAYMENT OF COMPENSATION FROM ANY GOVERNMENT) SHALL

HAVE BEEN DETERMINED BY THE FOREIGN CLAIMS SETTLEMENT COMMISSION. IN THE EVENT THAT DIFFERENCES BETWEEN THE FRG AND THE USG SHOULD ARISE IN RESPECT OF THE FOREGOING WHICH ARE NOT OTHERWISE SETTLED BETWEEN THEM, SUCH DIFFERENCES SHALL BE RESOLVED BY INTERNATIONAL ARBITRATION AT THE INSTANCE OF EITHER PARTY."

6. HOWEVER, WE DO NOT NOW CONTEMPLATE MAKING THE FOREGOING PROPOSAL TO THE FRG, BECAUSE WE APPREHEND
CONFIDENTIAL

CONFIDENTIAL

PAGE 04 STATE 054306

THAT IT MIGHT NOT BE ACCEPTABLE. WE PUT IT TO YOU TO SECURE YOUR REACTIONS AND TO MAKE CLEAR WHAT WE CAN AND CANNOT ACCEPT. IT IS HIGHLY UNLIKELY THAT ANY REFERENCE TO FRG LAW WOULD BE CONTAINED IN OR COULD BE UNDERSTOOD TO BE EMBRACED BY ANY ASSURANCE WE MIGHT OFFER.

7. IF AN ASSURANCE HAD TO BE OFFERED TO DISPOSE OF THE PROBLEM, WE COULD ENVISAGE A GENERALIZED ASSURANCE IN THE FOLLOWING TERMS: "UPON THE DISCHARGE BY THE GDR OF ITS OBLIGATIONS TO THE USG UNDER A CLAIMS AGREEMENT BETWEEN THEM, THE USG WILL BE PREPARED TO CONSULT FULLY AND CONSTRUCTIVELY WITH THE FRG WITH A VIEW TO FACILITATING PAYMENT TO THE FRG OF ANY SUMS TO WHICH IT MAY BE EQUITABLY ENTITLED IN VIEW OF THE IMPLEMENTATION OF THE GDR/USG CLAIMS AGREEMENT AND OF PAYMENTS BY THE FRG TO THE SAME CLAIMANTS FOR THE SAME PROPERTY LOSSES." SUCH AN ASSURANCE WOULD BE GIVEN CONFIDENTIALLY AND WOULD HAVE TO BE SO TREATED OR IT WOULD PREJUDICE POSSIBILITIES OF USG RECOVERY FROM GDR.

8. AT THE SAME TIME, WE REMAIN FIRMLY OF THE VIEW THAT, AS A MATTER OF LAW AND EQUITY, THE FRG SHOULD IMMEDIATELY LIFT SUSPENSION OF PAYMENTS, WITHOUT REQUIRING ANY USG ASSURANCE. THE FREYMUTH AND LIKE CASES PROVIDE THE FRG WITH A GRACEFUL EXIT FROM AN OTHERWISE AWKWARD IMPASSE. THE PROSPECTS OF GDR PAYMENT TO THE CLAIMANTS, ESPECIALLY IN THE NEAR TERM, AND MORE ESPECIALLY STILL IN SUBSTANTIAL AMOUNTS, APPEAR SO UNCERTAIN THAT FOR THE FRG TO SUSPEND CURRENT PAYMENTS TO INNOCENT AND OFTEN NEEDY AND AGED PENSIONERS WHO HAVE SUFFERED THE GRAVEST INDIGNITIES
CONFIDENTIAL

CONFIDENTIAL

PAGE 05 STATE 054306

ON THE PART OF GERMANY CANNOT BE DEFENDED, WHATEVER THE LEGAL RATIONALIZATION. WE HAVE NOTED RUMPF'S REACTION TO THE POSSIBILITY OF UNFAVORABLE CONGRESSIONAL OR OTHER PUBLICITY REPORTED REFTEL (A), PARA 6. IN

OUR VIEW, IF THIS MATTER SURFACES PUBLICLY, FRG HANDLING OF IT COULD WELL BE TREATED AS AN OUTRAGE WHICH, FOR OUR PART, WE COULD NOT DEFEND AND WHICH WE DO NOT BELIEVE FRG COULD SUCCESSFULLY EXPLAIN IN THE UNITED STATES.

9. AS FOR POSSIBILITY OF AMENDING U.S. LAW (REFTEL A, PARA 11), WE REGARD THIS AS A LAST RESORT WHICH HAS CLEAR DISADVANTAGES. BUT, IF WE DO NOT SUCCEED IN SETTLING THIS PROBLEM PROMPTLY, IT IS NOT AN OPTION THAT CAN BE EXCLUDED.

10. EMBASSY IS REQUESTED TO PURSUE PROBLEM FURTHER WITH FRG, GIVING RESPONSES TO FRG QUESTIONS OF PARAS. 2 AND 3 OF THIS MESSAGE AND STRESSING IMPORTANCE USG ATTACHES TO PROMPT LIFTING OF SUSPENSION OF PAYMENTS, DRAWING ON EARLIER INSTRUCTIONS AND PARA. 8 OF THIS MESSAGE AS IT JUDGES APPROPRIATE. IF FRG INDICATES ANEW THAT IT WILL NOT LIFT SUSPENSION WITHOUT SOME USG ASSURANCE, YOU ARE AUTHORIZED TO PRESENT THAT SET OUT IN PARA. 7 OF THIS MESSAGE. FYI: AS YOU WILL APPRECIATE, ANY REFERENCES, EXPRESS OR IMPLIED, TO FRG LAW OR AUTOMATIC CREDITING TO FRG OF ANY PORTION OF GDR PAYMENTS COULD NOT BE ACCEPTED BY US FOR INCLUSION IN A USG ASSURANCE. END FYI.

11. WE PLAN TO CALL IN FRG EMBASSY TO MAKE LIKE POINTS AND TO UNDERSCORE SENSITIVITY OF ISSUE AND DESIRABILITY OF DISPOSING OF IT BEFORE IT CREATES CONGRESSIONAL OR PUBLIC STIR. CHRISTOPHER

CONFIDENTIAL

NN

Message Attributes

Automatic Decaptioning: X
Capture Date: 01 jan 1994
Channel Indicators: n/a
Current Classification: UNCLASSIFIED
Concepts: COMPENSATION, JEWS, COURT DECISIONS, PROPERTY WAR CLAIMS
Control Number: n/a
Copy: SINGLE
Draft Date: 03 mar 1978
Decaption Date: 01 jan 1960
Decaption Note:
Disposition Action: RELEASED
Disposition Approved on Date:
Disposition Case Number: n/a
Disposition Comment: 25 YEAR REVIEW
Disposition Date: 20 Mar 2014
Disposition Event:
Disposition History: n/a
Disposition Reason:
Disposition Remarks:
Document Number: 1978STATE054306
Document Source: CORE
Document Unique ID: 00
Drafter: SMSCHWEBEL:CDJ
Enclosure: n/a
Executive Order: GS
Errors: N/A
Expiration:
Film Number: D780096-0990
Format: TEL
From: STATE
Handling Restrictions: n/a
Image Path:
ISecure: 1
Legacy Key: link1978/newtext/t197803109/aaaadoht.tel
Line Count: 208
Litigation Code IDs:
Litigation Codes:
Litigation History:
Locator: TEXT ON-LINE, ON MICROFILM
Message ID: 838924b9-c288-dd11-92da-001cc4696bcc
Office: ORIGIN L
Original Classification: CONFIDENTIAL
Original Handling Restrictions: n/a
Original Previous Classification: n/a
Original Previous Handling Restrictions: n/a
Page Count: 4
Previous Channel Indicators: n/a
Previous Classification: CONFIDENTIAL
Previous Handling Restrictions: n/a
Reference: 78 BONN 3420, 78 BONN 3669
Retention: 0
Review Action: RELEASED, APPROVED
Review Content Flags:
Review Date: 24 may 2005
Review Event:
Review Exemptions: n/a
Review Media Identifier:
Review Release Date: n/a
Review Release Event: n/a
Review Transfer Date:
Review Withdrawn Fields: n/a
SAS ID: 3123657
Secure: OPEN
Status: NATIVE
Subject: OVERLAPPING GERMAN CLAIMS
TAGS: CPRS, PGOV, GE, US, GC
To: BONN
Type: TE
vdkgvwkey: odbc://SAS/SAS.dbo.SAS_Docs/838924b9-c288-dd11-92da-001cc4696bcc
Review Markings:
Sheryl P. Walter
Declassified/Released
US Department of State
EO Systematic Review
20 Mar 2014
Markings: Sheryl P. Walter Declassified/Released US Department of State EO Systematic Review 20 Mar 2014